

Managing a HOME/LIHTC Project



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Introduction

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HOME Program

- ☐ HUD's Office of Community Planning & Development awards a block grant to a state, county or city referred to as a participating jurisdiction (PJ)
- ☐ Each PJ says how they use their funds in their Consolidated Plan
- ☐ HOME is a popular but small program that provides gap financing

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HOME Program cont'd

- ☐ A high percentage of LIHTC projects have HOME funding
- ☐ This training focuses on how to manage an LIHTC project so that it also meets the requirements of the HOME program

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Part One

Eligibility Issues at HOME/LIHTC Projects

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Eligibility Issues

- ☐ Income Limits
- ☐ Calculating and Verifying Annual Income
- ☐ Full Time Student Rule
- ☐ Fair Housing and Section 504

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HOME Income Limits

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HOME Income Limits

- ☐ At a project with 5 or more HOME units, the owner must rent **20% of the HOME units** to very low income families (50% of the AMI)
- ☐ Theoretically, the remaining HOME units can be rented to low income families (80% of the AMI)

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HOME Income Limits cont'd

- ☐ Every PJ has an income targeting requirement they must meet in their reporting to HUD
- ☐ 90% of the families that live in HOME assisted rental housing must have income not exceeding 60% of the AMI
- ☐ The PJ puts requirements into each project's HOME regulatory agreement to ensure they meet this goal within their jurisdiction

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Low HOME vs High HOME Units

- ☐ Every HOME assisted project has low HOME and high HOME units
- ☐ Each owner must know how many low HOME and high HOME units they need

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Low HOME Units

- ☐ For a unit to be a low HOME unit:
 - ☐ The resident must qualify with an annual income not above 50% of the AMI; and
 - ☐ The owner must charge no more than the low HOME rent

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High HOME Units

- ☐ For a unit to be a high HOME unit:
 - ☐ The resident must qualify at the high HOME income limit required in the Regulatory Agreement; and
 - ☐ The owner must charge no more than the high HOME rent

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High HOME Units cont'd

- ☐ The high HOME income limit required in most HOME regulatory agreements is 60% of the AMI
- ☐ Every owner must check their own HOME regulatory agreement

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More on HOME Income Limits

- ☐ The income limits HUD issues for the HOME program are based on those issued for the Section 8 program
- ☐ Because HUD has elected to stop holding the Section 8 income limits harmless, they now fluctuate with the economy and may go up or down in any given year

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More on HOME Income Limits cont'd

- ☐ The Section 8 income limits will not
 - ☐ Decrease by more than 5% in one year; or
 - ☐ Increase by more than 5% or twice the change in the national median income

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More on HOME Income Limits cont'd

- ☐ Because the HOME income limits are based on the Section 8 income limits, the income limits may increase or decrease in any given year
- ☐ Owners must insure they are using the correct income limit when approving a resident for a HOME unit

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2011 HOME Income Limits

- ☐ HUD issued the 2011 income limits for the HOME program on Monday, June 27th
- ☐ The HOME 2011 income limits can be found at
<http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/income/2011/index.cfm>

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LIHTC Income Limits

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Tax Credit Income Limits

- ☐ 20% @ 50% Minimum Set Aside
 - ☐ Income Limit is 50% of the AMI
- ☐ 40% @ 60% Minimum Set Aside
 - ☐ Income limit is 60% of the AMI

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Tax Credit Income Limits cont'd

- ☐ When an owner elects to deep rent skew, they commit to one of the minimum set asides and also promise to rent 15% of their LIHTC units to residents with income no greater than 40% of the AMI

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Example

- ☐ 100 unit project
- ☐ Owner elects 40% @ 60% set aside and to deep rent skew
- ☐ $100 \text{ units} \times 40\% = 40 \text{ units in set aside}$
- ☐ $40 \text{ units} \times 15\% = 6 \text{ units must be rented to residents below 40\% of the AMI}$

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Impact of HERA 2008

- ☐ HERA made changes to how income limits are calculated for LIHTC projects
- ☐ HERA protected owners from rent decreases in 2009 and established a new system for owners to hold their income limits harmless beginning in 2010
- ☐ HUD refers to an LIHTC project as an MTSP

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MTSP Income Limits

- ☐ HUD issues 2 sets of income limits for MTSPs:
 - ☐ Income limits for Impacted MTSPs
 - ☐ Income limits for non-Impacted MTSPs

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Impacted MTSPs

- ☐ An Impacted MTSP is any project with income limits determined in 2007 or 2008 under HUD's hold-harmless policy
- ☐ The project's income limits would have decreased in 2007 or 2008 if HUD had not held them at the previous year's level
- ☐ A project must have been in service before 2009 to be an Impacted MTSP

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Impacted MTSPs cont'd

- ☐ A single building property must have been in service prior to the end of 2008
- ☐ A multi-building property may qualify as an Impacted MTSP if at least one of its buildings was in service prior to 2009
- ☐ Remember that a multi-building property is defined on line 8b of the 8609 forms

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Acquisition/Rehab Properties

- ☐ Acquisition credits are PIS on the date of acquisition
- ☐ A building's rehab credits are PIS as the owner completes the rehab activities
- ☐ An ac/rehab project may qualify as an Impacted MTSP if its acquisition credits were PIS before 2009

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MTSP Income Limits

- ☐ If the income limit chart lists only a Very Low Income Limit and 60% Income Limit, all LIHTC projects in that county use these limits
- ☐ If the chart includes a second set of income limits, every owner must determine if their project was PIS before 2009

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MTSP Income Limits cont'd

- ☐ The owner of a non-Impacted project uses the Very Low Income and 60% limits
- ☐ The owner of an Impacted project uses the HERA Special 50% and HERA Special 60% income limits

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MTSP Income Limits cont'd

- ☐ May be counties for which HUD published HERA Special limits in 2009 but not 2010 and vice versa
- ☐ HUD does not publish HERA Special limits if they are less than the non-Impacted limits
- ☐ An Impacted project remains eligible to use any HERA Special limits HUD publishes for their area in future years

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Existing Non-Impacted Projects – 2010

- ☐ An existing non-Impacted project is one placed in service before HUD issued the current year's limits, May 14 in 2010
- ☐ Existing projects may use the greater of the current year's limits or those for the previous year (e.g., the greater of the income limits for 2009 or 2010)

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Existing Non-Impacted Projects – 2011

- ☐ An existing non-Impacted project is one placed in service before HUD issued the current year's limits, May 31 in 2011
- ☐ Existing projects may use the greater of the current year's limits or those for the previous year (e.g., the greater of the income limits for 2010 or 2011)

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New Non-Impacted Projects

- ☐ A new non-Impacted project is one that is placed in service on or after HUD issued the income limits for the current year
- ☐ A new non-Impacted project must use the income limits for the current year
- ☐ E.g., a new project in 2011 is one PIS on or after May 31, 2011 and as such, must use the 2011 income limits

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New Non-Impacted Projects cont'd

- ☐ A non-Impacted project is considered to be new just one year, the year it is placed in service
- ☐ The following year, a new project becomes an existing project and has the option of using the greater of the current year's or previous year's income limits

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Impact of Lowered Income Limits

- ☐ So long as the income limits do not go down, all non-Impacted projects in an area use the same income limits
- ☐ Once a county's income limits go down one year, an owner must know their PIS date relative to the date HUD issued the income limits each year beginning in 2010 to determine which year's income limits apply to their project

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Impacted Projects

- ☐ All Impacted projects in the same area use the same income limits
- ☐ Impacted income limits will not decline
- ☐ Impacted income limits issued for one year will never be less than those issued for the previous year

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Key Dates to Remember

- ☐ To use the HERA-Special income limits, a project had to have been **PIS by 12/31/08**
- ☐ HUD issued the 2010 income limits **on May 14, 2010** so a project PIS by May 13, 2010 may continue to use their 2009 income limits if they are higher than their 2010 and 2011 limits

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Key Dates to Remember cont'd

- ❑ HUD issued the 2011 income limits **on May 31, 2011** so a project PIS by May 30, 2011 may continue to use their 2010 income limits if they are higher than their 2011 limits

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Mixing HOME and Credits

- ❑ To be eligible for a HOME/tax credit unit, an applicant's income may not exceed **the lesser of** the relevant HOME income limit and the applicable MTSP limit
- ❑ Because the income limits for the LIHTC program were held harmless under HERA, but HOME's were not, 50% of the AMI for LIHTC may be more than 50% of the AMI for HOME, particularly at Impacted LIHTC projects

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Example

- ❑ Impacted LIHTC/Low HOME Unit
- ❑ 50% of the AMI for HOME = \$31,250
- ❑ LIHTC Very Low Income Limit = \$31,250
- ❑ HERA Special 50% Limit = \$34,900
- ❑ An applicant must have an annual income not exceeding \$31,250 to qualify for this HOME/LIHTC unit

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Use NNMGI Limits

- An owner uses the national nonmetropolitan median gross income limits if:
 - The project was PIS during 2006, 2007 or 2008, is located in the Gulf Opportunity Zone, and in a nonmetropolitan area as defined by
IRC §42(d)(5)(B)(iv)(IV)
 - The project is located in a rural area as defined in Section 520 of the Housing Act of 1949 and the NNMGI is greater than the AMI (not for bond-financed projects)

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IRC §42(d)(5)(B)(iv)(IV)

- **Nonmetropolitan area** means any county (or portion thereof) which is not within a metropolitan statistical area

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Resyndicating Existing LIHTC Project

- Any household determined to be low income at move-in during the initial 15 year compliance period or the extended use period is a qualified low-income household for any new LIHTC allocation
- How the owner places the new credits in service varies by type of project

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Resyndication by Original Owner

- ☐ The owner is subject to the available unit rule for any resident found over 140% of their income limit at last recertification
- ☐ The vacant units continue to qualify as low income units under the vacant unit rule

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Resyndication by New Owner

- ☐ Must implement the safe harbor rule by testing the income of any resident last recertified more than 120 days before the start of the new credit period and implement the available unit rule
- ☐ Vacant units do not count as low income
- ☐ Owner must calculate 1st year A/F monthly as generally required by the LIHTC program

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The Applicable Fraction

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Building's Applicable Fraction

- ☐ An owner usually wants more LIHTC units than required by the minimum set aside
- ☐ The maximum number of LIHTC units an owner wants in a building is set by the credit allocation received from the housing finance agency

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Applicable Fraction

- ☐ The applicable fraction is always calculated as the *lesser* of
 - ☐ Unit Fraction - % of LIHTC units in a building; vs
 - ☐ Square Footage Fraction - % of floor space in a building occupied by LIHTC-qualified residents

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Applicable Fraction cont'd

- ☐ It is always the owner's goal to maximize their LIHTC potential
- ☐ To draw maximum investment to an LIHTC building, the owner must meet their targeted applicable fraction by the end of the first year of the credit period

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Example

- ☐ Single Building 100 Unit Property
- ☐ 20% @ 50% Set Aside
- ☐ 70% Tax Credit Allocation
- ☐ Owner needs 20 LIHTC units to meet the minimum set aside and take any tax credit on their federal tax return
- ☐ Owner wants 70 LIHTC units by the end of the first year of the credit period

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Example cont'd

- ☐ The owner needs:
 - ☐ 70% of the Units Occupied by LIHTC residents; AND
 - ☐ 70% of the Floor Space Occupied by LIHTC residents
- ☐ By the end of year 1 of the credit period

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Example cont'd

- ☐ If the building's units cover 80,000 square feet, and the owner needs a 70% applicable fraction, 70 units covering 56,000 ($80,000 \times 70\%$) square feet must be rented to LIHTC residents by the end of year one of the credit period

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Blending HOME with LIHTC

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4 Ways to Mix HOME w/ LIHTC For Projects PIS Before HERA (7/30/08)

- ☐ An owner could get a grant from their PJ
- ☐ An owner could receive a market rate loan, defined as carrying an interest rate at or above the applicable federal rate (AFR)
- ☐ An owner could receive a below market rate loan, with an interest rate below the AFR, considered a federal subsidy so the owner received 4% LIHTC instead of the 9% LIHTC

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4 Ways to Mix HOME w/ LIHTC For Projects PIS Before HERA cont'd

- ☐ An owner could receive a below market rate HOME loan but still qualify for the 9% LIHTC by making an extra commitment regarding the occupancy requirements for their project
- ☐ An owner was required to meet the 40% @ 50% rule if they received a below market rate HOME loan but wanted to benefit from 9% LIHTC

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40% @ 50% Rule

- ☐ To receive 9% credits with a HOME below market rate loan, the owner was required to rent 40% of the units in every HOME assisted building to very low income families
- ☐ If the owner does not meet this requirement, the project qualifies for 4% LIHTC

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Example

- ☐ Building has a qualified basis of \$1,000,000
 - With 9% credits, it will produce an annual tax credit of \$90,000, or a \$900,000 total credit
 - With 4% credits, it will produce an annual tax credit of \$40,000, or a \$400,000 total credit
- ☐ If the investor is contributing \$.76 per LIHTC dollar, they will invest \$684,000 with 9% credits or \$304,000 with 4% credits

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Post July 2008 HOME Properties

- ☐ HERA 2008 changed the LIHTC program so that a below market HOME loan is no longer considered a federal subsidy
- ☐ Properties placed in service after July 30, 2008 do not need to comply with the 40% @ 50% rule to qualify for 9% LIHTC, even if they received a below-market rate loan through the HOME program

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Federal Grants

- ☐ For a building PIS after 7/30/08, eligible basis is reduced by a federal grant used to fund its development but not if a grant is used to fund its operation
- ☐ E.g., a grant may be used to fund the computers for the property's office and other common areas

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Mapping Your Project

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Mapping a HOME/LIHTC Project

- ☐ At a HOME/LIHTC project, an owner must map their lease-up to insure that they rent the right combination of units to the right residents to meet the occupancy requirements for both the HOME and LIHTC programs
- ☐ The owner must be knowledgeable of both the HOME and LIHTC regulatory agreements to properly chart the requirements each unit must meet

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Mapping a HOME/LIHTC Project cont'd

- ❑ The owner needs to lease the units so that they:
 - Meet each building's targeted applicable fraction; and
 - Meet the requirements of the HOME regulatory agreement
- ❑ E.g., Fixed HOME units versus floating HOME units and low HOME versus high HOME units

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Annual Income and Verifications

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Verifications

- ❑ The LIHTC program requires an owner verify an applicant's income through an independent 3rd party to qualify them as low income
- ❑ The HOME program allows an owner to use documents provided by the resident (e.g., pay stubs) without contacting a 3rd party
- ❑ The owner of a blended project must follow the more strenuous requirements for LIHTC

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Assets not Exceeding \$5,000

- ☐ The LIHTC program allows an applicant with assets not exceeding \$5,000 to self certify the income from their assets
- ☐ The HOME Program does not allow any applicant to self-certify the income from their assets so the owner must require the applicant to provide bank statements to comply with HOME

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Forms

- ☐ Neither the IRS or HUD have issued any required compliance forms
- ☐ Any required forms have been issued to by the HFA for LIHTC or the PJ for HOME
- ☐ Many state HFAs and PJs use the model forms issued by the National Council of State Housing Agencies

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Fair Housing and Section 504

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Fair Housing & Section 504

- ☐ Section 504, which protects the rights of persons with disabilities in HUD-assisted housing applies to the HOME program
- ☐ Owners of HOME/LIHTC projects must comply with fair housing law and Section 504
- ☐ In some areas, 504 requires an owner take a more proactive approach to protecting the rights of persons with disabilities

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Resident Selection

- ☐ Under Section 504, an available accessible unit must go to an existing resident who has requested a transfer to an accessible unit before being offered to a new applicant
- ☐ The owner must also insure this transfer meets the requirements of both the LIHTC and HOME programs discussed later in this seminar

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Physical Modifications

- ☐ When an applicant, resident, employee or possible employee asks for a modification to unit or common area, the owner must complete it unless doing so would cause undue financial or admin burden or make a fundamental change to its program
- ☐ Operating in good faith, an owner must be able to justify what they considered an "undue burden" when turning down a request for an accommodation

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Section 504 and HOME

- ☐ When HOME units are fixed, Section 504 applies only to the HOME units and the common areas
- ☐ When the HOME units float, Section 504 applies to the entire project
- ☐ The HOME regulatory agreement tells the owner if their HOME units are fixed or if they float

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Part Two

Maximum Allowable Rent at HOME/LIHTC Projects

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Maximum Allowable Rent

- ☐ Maximum Allowable Rent
- ☐ Section 8 Rental Assistance
- ☐ Utility Allowances
- ☐ Rent Increases
- ☐ Rent Decreases/Rent Floors

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HOME Maximum Allowable Rent

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HOME Maximum Allowable Rent

☐ HUD calculates the High HOME Rent as *the lesser of:*

- Section 8 fair market rent (FMR); or
- 30% of the adjusted income for a family with income no greater than 65% of the AMI

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HOME Max Rent cont'd

☐ HUD calculates the low HOME Rent as either:

- 30% of the annual income for a family with income no greater than 50% of the AMI
- 30% of the adjusted income for the family occupying the unit

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HOME Max Rent cont'd

- ☐ Most owners elect the first option for low HOME units to lock in a steady income stream that does not vary based on the income of the household living in the unit
- ☐ If you need to calculate adjusted income for a low HOME tenant, follow the rules for the project based Section 8 program found in Chapter 5 of 4350.3 Handbook

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HOME Max Rents cont'd

- ☐ HUD issues the HOME income limits and rents generally within a month of issuing the income limits for the Section 8 program
- ☐ An owner should continue to use the existing HOME income limits and rents until HUD issues the new numbers for HOME for the new year

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2011 HOME Income Limits

- ☐ HUD issued the 2011 maximum rents for the HOME program on Monday, June 27th
- ☐ The HOME 2011 maximum rents can be found at <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/rent/2011/>

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LIHTC Maximum Allowable Rent

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Tax Credit Maximum Rent

- ☐ Maximum allowable rent is 30% of the project's income limit for an imputed household size
- ☐ Impute 1 person for an efficiency/studio
- ☐ Impute 1.5 persons per bedroom for other unit sizes

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Example

- ☐ 20% @ 50% Impacted project
- ☐ 1 bedroom with a \$45 utility allowance
- ☐ 1 person HERA Special 50% = \$16,700
- ☐ 2 person HERA Special 50% = \$18,100
- ☐ $(16,700 + \$18,100)/2$
- ☐ $\$34,800/2 = \$17,400$ HERA Special limit for 1.5 persons

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Example cont'd

- ☐ $\$17,400 \times 30\% = \$5,220$ max annual rent
- ☐ $\$5,220/12 = \435 monthly gross rent
- ☐ $\$435 - \$45 = \$390$ tenant rent
- ☐ Always round down when dividing the annual rent by 12 to get the monthly gross rent

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Example

- ☐ 2 bdrm x 1.5 persons = 3 persons
- ☐ 2 bdrm UA = \$70
- ☐ 3 person income limit = \$34,000
- ☐ $\$34,000 \times 30\% = \$10,200$
- ☐ $\$10,200/12 = \850 = gross rent
- ☐ $\$850 - \$70 = \$780$ = tenant rent

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Maximum Allowable Rents

- ☐ A unit is out of compliance if the rent charged, figured both monthly and annually exceeds 30% of the imputed income limit
- ☐ If an owner charges a fee a resident's first month for a washer/dryer hookup, it is noncompliance if the total charged the first month multiplied by 12 is more than the maximum allowable rent

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Maximum Rents cont'd

- ☐ Once out of compliance, a unit is **out of compliance for the remainder of the owner's tax year**
- ☐ An owner cannot avoid noncompliance by rebating the excess amount charged to the involved residences

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Maximum Rents cont'd

- ☐ Because the unit that is out of compliance for the remainder of the year, it is not included in the year-end applicable fraction
- ☐ Not being included in the applicable fraction means the unit will not produce an LIHTC for the year

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Maximum Rent for a HOME/LIHTC Unit

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Max Rent in HOME/Credit Unit

- ☐ In a HOME/tax credit unit, the owner may charge no more than **the lesser of** the maximum allowable tax credit rent or the HOME rent approved for the unit size

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Example

- ☐ 2 Bdrm x 1.5 persons = 3 persons
- ☐ 2 Bdrm UA = \$70
- ☐ 3 person income limit = \$34,000
- ☐ \$34,000 x 30% = \$10,200
- ☐ \$10,200/12 = \$850 Gross Rent
- ☐ \$850 - \$70 = \$780 Tenant Rent

Cont'd

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Example cont'd

- ☐ Unit is high HOME Unit
- ☐ HUD high HOME Rent = \$750
- ☐ HOME UA = \$70
- ☐ HOME Tenant Rent = \$750 - \$70 = \$680
- ☐ Maximum Tenant Rent = \$680

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The Impact of Rental Assistance

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Housing Choice Vouchers

- ☐ May collect total revenue = market rent for tax credit unit if
 - ☐ Tenant receives at least \$1 in rental assistance; and
 - ☐ The owner drops the amount charged to the tax credit rent if the resident goes off the voucher program for any reason

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Example

- ☐ Tax Credit Gross Rent = \$850
- ☐ Tax Credit Tenant Rent = \$780
- ☐ Market Rent = \$925
- ☐ Tenant Contribution = \$500
- ☐ HAP Payment = \$425

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Vouchers and HOME

- ☐ An owner may not collect more than the HOME rent when a resident receives rental assistance through the housing choice voucher program
- ☐ The total revenue the owner receives, from both the housing authority and the resident, may not exceed the allowable HOME rent

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Example

- ☐ Tax Credit Gross Rent = \$850
 - ☐ Tax Credit Tenant Rent = \$780
 - ☐ High HOME Unit w/ \$70 UA
 - ☐ High HOME Rent = \$750
 - ☐ $\$750 - \$70 = \$680$ HOME Tenant Rent
- Cont'd

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Example cont'd

- ☐ Tenant is on the HCV program
- ☐ Tenant Contribution = \$400
- ☐ HAP Payment = \$280
- ☐ The owner cannot collect the higher tax credit rent or a market rent because this is a HOME unit

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Project Based Section 8 Contracts

- ☐ An owner may collect more than the HOME rent for a unit covered by a project based subsidy contract if:
 - ☐ It is a federal or state project-based contract;
 - ☐ The owner uses the very low income limit; and
 - ☐ The family contribution for their shelter does not exceed 30% of their adjusted income

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Example

- ☐ 2 Bedroom HOME Unit
- ☐ HOME Rent = \$500
- ☐ Project Based Section 8 Contract Using the Very Low Income Limit
- ☐ Section 8 Contract Rent = \$900
- ☐ Tenant Contribution = \$400
- ☐ HAP Payment = \$500

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Project Based Vouchers & HOME

- ☐ There is debate within the industry whether a project based voucher is covered by the rule for the HCV program versus the project-based contract program regarding the maximum allowable rent for a HOME unit
- ☐ An owner should confer with the PHA who would administer their project-based voucher and stressed that this is project-based rental assistance

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The Utility Allowance

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Tax Credit Utility Allowances

- ☐ HUD regulated projects use the HUD approved UA
- ☐ RD regulated projects use the RD approved UA, even when also HUD regulated
- ☐ Use the PHA required for all residents on the voucher program except at an RD project
- ☐ Use the RD approved UA for residents on HCV program in RD regulated projects

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LIHTC Utility Allowances cont'd

- ☐ Other projects use PHA UA or use other methods to determine the utility allowance as allowed by the HFA
- ☐ In July 2008, the IRS issued a new regulation releasing HFAs to allow owners to use various methods to calculate their UA
- ☐ Owners should confer with their HFA

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Utility Allowances

- ☐ The utility allowance does not include cable for television or Internet service
- ☐ Utilities provided through a sub-metering system are included if the rates charged the resident are what the utility company charges the owner, the owner charges a limited admin fee, and cost for sewerage is based on resident consumption

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Non Compliance

- ☐ The 2011 version of the 8823 Audit Guide clarifies that determinations of noncompliance are made when gross rent exceeds the maximum allowable rent as the result of owner computational or procedural errors in calculating the UA
- ☐ **Using the wrong utility allowance, by error, may cause a loss of tax credits!!!**

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Non Compliance - No Utility Allowance

- ☐ Can only be corrected by performing an annual review to determine a utility allowance using current information
- ☐ An owner is in compliance if the rent charged plus the correct utility allowance is not more than the maximum allowable rent

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Non Compliance – No Annual Review

- ☐ Owner may conduct a review retroactive back to when the review of the UA should have been done or do a current review based on current information
- ☐ Owner is in compliance when they show the rent charged did not exceed the max allowable rent using the correct UA
- ☐ Could be no noncompliance if no overcharge

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Non Compliance – Insufficient Documentation

- ☐ Owner fails to maintain sufficient docs to justify the utility allowance
- ☐ Owner must be given the opportunity to provide the necessary documentation, including doing a new review, to justify the utility allowance in use and avoid noncompliance

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Reporting Noncompliance

- ☐ Noncompliance should be reported when the rent paid by the resident, plus the utility allowance, exceeds the max LIHTC rent
- ☐ Noncompliance should not be reported if use of the wrong UA does not cause the owner to overcharge the resident or if the error is corrected before the owner is notified of the HFA monitoring review

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Expanded Potential for Noncompliance

- ☐ Noncompliance with the utility allowance and maximum rent regulations typically affects multiple units
- ☐ May easily cause a project to fall out of compliance with its minimum set aside meaning an owner loses all LIHTC for the project for the year

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HOME Utility Allowances

- ☐ A PJ must establish UA schedule for HOME their assisted Units
- ☐ May use PHA schedule or other suitable data
- ☐ An owner wants to be able to use the same UA for both the HOME and LIHTC programs

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Rent Increases

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Rent Increases

- When HOME PJ and state agency issue new rents, owner must verify that they are charging the lower of the 2 rents for the new year

- Example

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Example

Yr 1 Tax = \$670 HOME = \$665

Yr 2 Tax = \$675 HOME = \$680

Yr 3 Tax = \$690 HOME = \$685

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The Rent Floor

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Rent Floor

- ☐ In Rev Proc 94-57, IRS established the concept of the rent floor which the IRS treats as taking effect
 - On the date the HFA initially allocated a credit dollar amount (at carryover); or
 - For bond-financed projects, on the date the HFA initially issued the credit reservation letter

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Rent Floor cont'd

- ☐ The owner may notify the HFA, prior to placing a building in service, of their intent to calculate the rent floor using the income limits in effect at the placed in service date

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Impact of MTSP Limits

- ☐ New method of calculating income limits seems to nullify Revenue Procedure 94-57
- ☐ A new rent floor is established for a project every time HUD announces new, higher MTSP income limits for the county or metropolitan area

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Impact of MTSP Limits cont'd

- ☐ There is a sub-set of non-Impacted projects for which Rev Proc 94-57 remains relevant
- ☐ For a project with a rent floor established at the issuance of the carryover allocation or the reservation letter, where the income limits go down by the placed in service date, the initial maximum rents will be the rent floor

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Impact of MTSP Limits cont'd

- ☐ But, the income limits used to determine resident eligibility will be those at PIS
- ☐ The income limits used to calculate rents will be higher than those for eligibility
- ☐ This situation will continue until the current year's income limits are at least equal to those used to calculate the rent floor

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Rent Floor Example

- ☐ Owner locks in the rent floor at carryover based on the 2011 income limits
- ☐ The owner PIS in 2013 and the 2013 income limits are lower than the 2011 limits
- ☐ The owner uses the 2011 limits to calculate rents but the 2013 limits to process applications
- ☐ This situation continues until the limits for the current year are at least equal to 2011 limits

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HOME Rent Floor

- ☐ HUD decided to hold the HOME rents harmless even though they are allowing the income limits to determine HOME eligibility to fluctuate with the Section 8 limits
- ☐ A new rent floor is established every time HUD announces new, higher HOME rents for the PJ

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Part Three

Ongoing Compliance at HOME/LIHTC Projects

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Leasing Requirements

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Leasing Requirements

- ☐ There is no model lease for either the HOME or LIHTC programs
- ☐ Many owners use a conventional lease and add paragraphs to address program issues for HOME and/or LIHTC

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Length of the Initial Lease

- ☐ For the LIHTC program, the initial lease must be at least six months to demonstrate that it is not a transient tenancy
- ☐ For the HOME program, the initial lease must be at least one year, or of a shorter duration if mutually agreeable to both the owner and resident

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Leasing Requirements cont'd

- ☐ The lease should list the household composition listed on the LIHTC/HOME TIC as the household approved for occupancy
- ☐ The lease should make it a condition of occupancy that the resident report for annual recertifications

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Leasing Requirements cont'd

- ☐ The lease should allow the owner to be as aggressive as legally possible in increasing rents when HUD announces new income limits
- ☐ The lease should implement the requirements of the LIHTC student rule

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Office Located in an LIHTC Unit

- ☐ A resident may use a portion of an LIHTC unit exclusively and on a regular basis as a principle place of business and claim the associated expenses as tax deductions, if the unit is their primary residence
- ☐ Daycare providers must have all required state licenses and insurance

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The Compliance Period

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Tax Credit Compliance Period

- ☐ Tax credit properties have an initial compliance period lasting 15 years
- ☐ The owner must comply with all requirements of the LIHTC program for 15 years for the owner to take and keep the credits they expect during the 10 year credit period

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Tax Credit Extended Use Period

- ☐ In the year 16, the owner continues with the extended use period which lasts at least 15 additional years
- ☐ The compliance requirements may be less stringent in the extended use period, depending on the requirements established by the HFA for their jurisdiction and the terms of a project's regulatory agreement

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HOME Period of Affordability

- ☐ In the HOME program, the compliance period is called the period of affordability
- ☐ The length of a project's period of affordability is based on the level of HOME funding the owner received

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HOME Period of Affordability cont'd

- When an owner receives:
 - Up to \$15,000/HOME unit, it lasts 5 years
 - Up to \$40,000/HOME unit, it lasts 10 years
 - More than \$40,000/HOME unit or refinances an existing property, it lasts 15 years
 - Funding for new construction, it lasts 20 years

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Annual Recertifications

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LIHTC Annual Recertifications

- The owner of a 100% LIHTC project is not required to do annual income recertifications
- The owner is required to certify every resident's continued compliance with the student rule on an annual basis
- A unit occupied by a resident who no longer complies under the student rule stops producing a tax credit

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LIHTC Annual Recertifications cont'd

- ☐ An owner of a mixed-income LIHTC project must complete annual recertifications and compare each LIHTC resident's income to 140% of their current income limit
- ☐ The owner must follow the same income documentation requirements as used when completing initial certifications

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HOME Annual Recertifications

- ☐ The HOME program
 - Requires all owners to complete annual recertifications
 - Allows owners to rely on resident statements to document income if they collect source documents from the residents every 6 years
- ☐ A PJ may impose stricter verification standards for recertifications

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Recertifications at Blended Projects

- ☐ An owner of a HOME/LIHTC project:
 - Must follow the stricter documentation requirements of the LIHTC program
 - Must complete annual recertifications for the HOME program even when the LIHTC program no longer requires them
 - Must implement the LIHTC student rule

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Fixed and Floating HOME Units and The Available Unit Rule

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Fixed & Floating Units

- ☐ HOME units may be fixed or they may be allowed to float, as outlined in a project's HOME regulatory agreement
- ☐ With fixed units, the regulatory agreement lists which are the fixed units
- ☐ With floating units, the regulatory agreement lists the original HOME units and those units considered comparable to which the HOME designation may float

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HOME Available Unit Rule

- ☐ If a low HOME resident's income rises above the very low income limit, but stays below the low income limit, the unit becomes a high HOME unit
- ☐ The owner must implement the HOME available unit rule to insure they maintain the required mix of low HOME vs high HOME units
- ☐ If it is also an LIHTC unit, the owner may not charge the resident more than the LIHTC rent

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HOME Available Unit Rule cont'd

- ❑ If the increase in a resident's income results in the project being short a low HOME unit, if the units are:
 - Fixed, the owner must rent the next available HOME unit to a low HOME resident
 - Floating, the owner must rent the next available comparable unit to a low HOME resident

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HOME Available Unit Rule cont'd

- ❑ If a HOME resident's income rises above the low income limit, the owner must charge them the lesser of the rent permitted by law, 30% of their adjusted income or a comparable market rent
- ❑ If it is a LIHTC unit, the owner may not charge them more than the LIHTC rent

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Example

- ❑ HOME/LIHTC Unit
- ❑ HOME Rent = \$500
- ❑ LIHTC Rent = \$600
- ❑ Market Rent = \$800
- ❑ Maximum Rent \$500

Cont'd

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Example cont'd

- ☐ Resident's Income Rises Above 80% of AMI
- ☐ 30% of Adjusted Income = \$680
- ☐ Maximum Rent = \$600
- ☐ Owner wants the unit to continue to produce a tax credit!

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Example

- ☐ 100% LIHTC 10 unit property
- ☐ All 2 bedroom Units
- ☐ 4 low HOME Residents – Floating
- ☐ 4 high HOME Residents – Floating
- ☐ High HOME and LIHTC Income Limit is 60% of the AMI

Cont'd

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Example cont'd

- ☐ Low HOME Rent = \$500
- ☐ High HOME Rent = \$600
- ☐ Tax Credit Rent = \$580
- ☐ Low HOME tenant's income > low income limit
- ☐ Owner increases rent to \$580
- ☐ Owner rents next available unit to low HOME resident and charges the low HOME rent

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LIHTC Available Unit Rule

- ☐ Remember to rent all units of comparable or smaller size that come available to LIHTC-qualified residents until the building's unit and square footage applicable fraction are large enough to support the anticipated LIHTC without including the over-income residents

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LIHTC Available Unit Rule cont'd

- ☐ Keep the over-income resident in the A/F as long as you need them to produce a tax credit by charging them no more than the maximum allowable LIHTC rent

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Transfers

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LIHTC Transfer Rule

- A resident can transfer
 - To another unit in the same building without requalifying for the program
 - To another building in the project if their income was not more than 140% of their income limit at their last recertification
 - To any other unit/building included in the same 100% LIHTC project

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HOME Transfers

- When the HOME units are:
 - Fixed, a HOME resident maintains their HOME status only if they transfer to another HOME unit
 - Floating, a HOME resident maintains their HOME status only if they transfer to a comparable unit as described in the project's HOME regulatory agreement, or another unit already designed with HOME status

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Reporting Requirements

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LIHTC Monitoring & Reporting

- Every 3 years, the HFA must:
 - Review 20% of the resident files;
 - Inspect 20% of the units plus the common areas;
 - Use local building codes or HUD's Uniform Physical Condition Standards

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HOME Monitoring & Reporting

- PJ must review resident files and conduct a physical inspection:
 - Every 3 years for a project with up to 4 total units;
 - Every 2 years for a project with 5 to 25 total units;
 - Every year for a project with more than 25 units

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Monitoring & Reporting cont'd

- PJs have multiple options from which they may select for guiding their physical inspections
- Owners should ask for the inspection protocol used by their PJ

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Annual Reporting

- ☐ Both the HOME and LIHTC program requires an owner to submit an *Owner's Annual Certification of Compliance*
- ☐ Each HFA and PJ establishes their own format, deadline, and backup requirements for owner's certifications submitted for projects in their jurisdiction

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Part Four

Private Activity Bonds

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Private Activity Bonds

- ☐ A HOME/LIHTC project may have received its LIHTC via financing through the private activity, tax-exempt bond program
- ☐ An owner may qualify for LIHTC that accompany bond financing if they structure the project so that it meets the basic requirements of the LIHTC program
- ☐ The owner must comply with the requirements of the HOME, LIHTC and bond programs

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Bond Minimum Set Aside

- ☐ An owner must commit to a minimum set aside and has the same options as in the LIHTC program
 - ☐ 20% @ 50% of AMI
 - ☐ 40% @ 60% of AMI
 - ☐ Deep Rent Skew
 - ☐ 15% of low income units @ 40% of AMI

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Bond Income Limits

- ☐ A property financed with tax-exempt bonds is an MTSP
- ☐ The owner uses the MTSP income limits HUD issues for the LIHTC program discussed earlier in this training

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Maximum Allowable Rents

- ☐ There are no regulations that limit the rents an owner charges for a tax-exempt bond unit but the bond issuing agency may set limitations in the bond regulatory agreement
- ☐ If a unit is also an LIHTC unit, the owner is limited to charging no more than the maximum LIHTC rent

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Full Time Students

- ☐ Under HERA 2008, an owner of a bond financed property, regardless if the property also has tax credits, must implement the fulltime student rule for the LIHTC program
- ☐ Owner must implement the LIHTC student rule for all eligibility determinations completed after July 30, 2008

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Bond Available Unit Rule

- ☐ In the regulations for the tax-exempt bond program, the available unit rule is implemented by property, instead of by building as it is in the LIHTC program
- ☐ The owner must rent the next available unit of comparable or smaller size *on the property* to a bond eligible resident when discovering a resident's income is more than 140% of their income limit

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Available Unit Rule cont'd

- ☐ The owner of a bond-financed project:
 - ☐ With LIHTC, follows the LIHTC available unit rule
 - ☐ Without LIHTC, follows the bond available unit rule

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Bond Regulatory Agreement

- An owner should know the what their bond regulatory agreement says on the following topics
 - Maximum Rents
 - Verifications/Form Requirements
 - Annual Recertifications
 - Placement of low income units in multiple building projects
 - Monitoring/Reporting Requirements

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Part Five

Wrap Up with Questions

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Questions?

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